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23 VLSI TECHNOLOGY LLC

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25 **UNITED STATES DISTRICT COURT**
26
NORTHERN DISTRICT OF CALIFORNIA

27
28 18 INTEL CORPORATION and APPLE INC.,

19 Plaintiffs,

20 v.

21 FORTRESS INVESTMENT GROUP LLC,
22 FORTRESS CREDIT CO. LLC, UNILOC
23 2017 LLC, UNILOC USA, INC., UNILOC
24 LUXEMBOURG S.A.R.L., VLSI
TECHNOLOGY LLC, INVT SPE LLC,
INVENTERGY GLOBAL, INC., IXI IP, LLC,
and SEVEN NETWORKS, LLC,

25 Defendants.

Case No. 3:19-cv-07651-EMC

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28 **DEFENDANTS' REQUEST FOR
JUDICIAL NOTICE IN SUPPORT OF
THEIR JOINT MOTION TO DISMISS
AND STRIKE PLAINTIFFS' AMENDED
COMPLAINT**

Hon. Edward M. Chen

Date: December 17, 2020
Time: 1:30 p.m.
Dept.: Courtroom 5

1 Defendants Fortress Investment Group LLC (“Fortress”), Fortress Credit Co. LLC
 2 (“Fortress Credit”), Uniloc 2017 LLC (“Uniloc 2017”), Uniloc USA, Inc. (“Uniloc USA”), Uniloc
 3 Luxembourg S.a.r.l. (“Uniloc Luxembourg”), VLSI Technology LLC (“VLSI”), INVT SPE LLC
 4 (“INVT”), Inventergy Global, Inc. (“Inventergy”), IXI IP LLC (“IXI”), and Seven Networks, LLC
 5 (“Seven Networks” and, collectively, “Defendants”) have moved to dismiss and to strike the
 6 Amended Complaint (“AC”) of Plaintiffs Apple Inc. (“Apple”) and Intel Corporation (“Intel” and,
 7 collectively, “Plaintiffs”). In support of their Motion, Defendants request that the Court take
 8 judicial notice of certain public records maintained by the United States Patent and Trademark
 9 Office (“USPTO”) and various court and administrative decisions.

10 **ARGUMENT**

11 In ruling on a motion to dismiss under Rule 12(b)(6), “courts must consider . . . matters of
 12 which a court may take judicial notice.” *Tellabs, Inc. v. Makor Issues & Rights, Ltd.*, 551 U.S.
 13 308, 322 (2007). A fact is judicially noticeable if it is “not subject to reasonable dispute.” *Khoja*
 14 *v. Orexigen Therapeutics, Inc.*, 899 F.3d 988, 999 (9th Cir. 2018) (quoting Fed. R. Evid. 201(b)).
 15 Here, Defendants seek judicial notice of two categories of documents: (1) publicly available
 16 records of the USPTO; and (2) administrative decisions in the allegedly “meritless” infringement
 17 actions. All of these materials are subject to judicial notice.

18 **I. THE RECORDS OF THE USPTO ARE JUDICIALLY NOTICEABLE**

19 Records maintained by the USPTO are judicially noticeable because these records are
 20 publicly available and “not subject to reasonable dispute.” *Balance Studio, Inc. v. Cybernet Ent.,*
 21 *LLC*, No. 15-CV-04038-DMR, 2016 WL 1559745, at *1, n.3 (N.D. Cal. Apr. 18, 2016) (taking
 22 notice of USPTO records); *see also Khoja*, 899 F.3d at 1001 (noting that courts can take notice of
 23 “patent application[s]”); *Klang v. Pflueger*, 2014 WL 4922401, at *1 (C.D. Cal. July 10, 2014)
 24 (taking judicial notice of USPTO patent assignment records and the patents at issue “because they
 25 are public records”). This Court previously took notice of, and relied on, certain USPTO records
 26 in its Order Dismissing Plaintiffs’ Complaint. Dkt. 190 (herein, “Order”) at 14:9-23. Moreover,
 27 Plaintiffs did not oppose Defendants’ prior request to take notice of these materials.

28 Defendants seek judicial notice of three categories of USPTO records:

1 First, Defendants seek judicial notice of three patents cited in the AC: (1) U.S. Patent No.
 2 6,215,403, which “relates to a wireless monitoring and more particularly to a suffocation
 3 prevention system” that is meant “to ensure proper breathing to infants and bed-ridden
 4 individuals”; (2) U.S. Patent No. 7,220,220, which relates to an “exercise monitoring system and
 5 methods”; and (3) U.S. Patent No. 6,058,437, which relates to the use of a “Translation Lookaside
 6 Buffer” that keeps track of data location in a shared memory. AC ¶¶ 213, 292; Motion at 12-13;
 7 Declaration of Olivia L. Weber ISO Defendants’ Joint Motion to Dismiss and Strike (“Weber
 8 Decl.”) ¶¶ 3-5, Exs. A-C. Courts routinely take notice of patents. *See, e.g., Klang*, 2014 WL
 9 4922401, at *1 (Patents “are proper subjects for judicial notice under Federal Rule of Evidence
 10 201.”); *GeoVector Corp. v. Samsung Elecs. Co.*, 234 F. Supp. 3d 1009, 1016, n.2 (N.D. Cal. 2017)
 11 (“The Korean Patent is also the proper subject of judicial notice as it is part of a publicly available
 12 government record.”). Moreover, because the AC relies on these patents, they are “incorporated
 13 by reference,” and the Court may consider them on this basis as well. *GeoVector Corp.*, 234 F.
 14 Supp. 3d at 1016.

15 Second, Defendants seek judicial notice of the number of patents that have been assigned
 16 to Intel and Apple since the beginning of 2000. *See Motha v. Time Warner Cable Inc.*, No. 16-
 17 CV-03585-HSG, 2016 WL 7034039, at *2 (N.D. Cal. Dec. 2, 2016) (taking notice of the fact that
 18 patent assignments were recorded). A list of such patents can be found by searching the USPTO’s
 19 Patent Full Text (“PaFT”) database which is publicly available. Weber Decl. ¶¶ 6-7. A search of
 20 this database demonstrates that Intel and Apple have been assigned more than 37,000 and 22,000
 21 patents, respectively, since January 1, 2000. *Id.*, Ex. D at 2-5.

22 Third, Defendants seek judicial notice of the number and ownership of patents that fall
 23 within certain patent classifications as defined by the USPTO. The USPTO has established a
 24 patent classification scheme called the Cooperative Patent Classification (CPC).¹ As explained in
 25 Defendants’ Motion, some of these classifications fall within Plaintiffs’ broadly defined
 26 “markets.” Motion at 17-18. A search of the PaFT database demonstrates the following:
 27

28 ¹ <https://www.uspto.gov/web/patents/classification/cpc>

- The USPTO has issued over 560,000 patents since January 1, 2000 under the CPC classification for “Electric Digital Data Processing.” *Weber Decl.* ¶ 9, Ex. D at 6-7;
- The USPTO has issued over 390,000 patents since January 1, 2000 under the CPC classification for “Semiconductor Devices.” *Id.* ¶ 10, Ex. D at 8-9;
- The USPTO has issued over 62,000 patents since January 1, 2000 under the CPC classification for “Detecting, measuring or recording for diagnostic purposes; Identification of persons.” *Id.* ¶ 12, Ex. D at 10-11. All three of Defendants’ allegedly “substitute” patents in the purported “health monitoring” market share this CPC main group. *Id.* ¶ 11, Ex. E. at 2-4. According to the USPTO database, Apple and Intel own 153 and 124 patents in this group, respectively. *Id.* ¶¶ 13-14, Ex. D at 12-15; and
- The USPTO has issued over 67,000 patents since January 1, 2000 under the CPC classification for “Security arrangements for protecting computers, components thereof, programs or data against unauthorized activity.” *Id.* ¶ 16, Ex. D at 16-17. Seven of Defendants’ patents in the alleged “digital rights management” market share this CPC main group. *Id.* ¶ 15, Ex. F at 2-8. According to the USPTO database, Intel and Apple own 1,935 and 730 patents in this group, respectively. *Id.* ¶¶ 17-18, Ex. D at 18-21.

20 The Court previously took notice of, and relied on, searches of the USPTO PaFT database. Order
21 at 14:9-23. It should do the same here.

22 II. THE PROCEEDINGS OF ADMINISTRATIVE AGENCIES ARE JUDICIALLY
23 NOTICEABLE

24 It is well established that courts may take judicial notice of decisions made by
25 administrative agencies. *Papai v. Harbor Tug & Barge Co.*, 67 F.3d 203, 207, n.5 (9th Cir. 1995),
26 *rev'd on other grounds*, 520 U.S. 548 (1997) (“Judicial notice is properly taken of orders and
27 decisions made by other courts and administrative agencies.”). This includes decisions by the
28 Patent Trial and Appeal Board (“PTAB”) on whether to institute *inter partes* review. *See, e.g.*,

1 *Finjan, Inc. v. Blue Coat Sys., Inc.*, No. 15-CV-03295-BLF, 2016 WL 7732542, at *1, n.1 (N.D.
 2 Cal. July 25, 2016) (“The Court takes judicial notice of the PTAB’s decisions on whether to
 3 institute IPR for these patents.”); *Atlas IP LLC v. Pac. Gas & Elec. Co.*, No. 15-CV-05469-EDL,
 4 2016 WL 1719545, at *1, n.1 (N.D. Cal. Mar. 9, 2016) (taking “judicial notice of the Final Written
 5 Decision of the Patent Trial and Appeal Board.”).

6 As explained in Defendants’ Motion, the AC repeatedly alleges that Defendants’ patents
 7 are weak and meritless, *e.g.*, AC ¶¶ 2, 10, 30, 34, 38, 39, 43, 88, 94, 96, 105, 430, 431, and more
 8 than 150 paragraphs in the AC are directed at attacking litigation conduct, Motion at 38.
 9 Accordingly, Defendants seek judicial notice of the following decisions issued by the PTAB
 10 denying Plaintiffs’ request for *inter partes* review on Defendants’ patents:

- 11 • *Apple Inc., v. Seven Networks, LLC*, No. IPR2020-00425 (P.T.A.B. Sept. 1, 2020);
- 12 • *Apple, Inc. v. Seven Networks, LLC*, No. IPR2020-00507 (P.T.A.B. Sept. 1, 2020);
- 13 • *Apple Inc., v. Seven Networks, LLC*, No. IPR2020-00189 (P.T.A.B. June 11, 2020);
- 14 • *Apple Inc. et al. v. INVT SPE LLC*, No. IPR2018-01473 (P.T.A.B. Mar. 25, 2020);
- 15 • *Apple Inc. et al. v. INVT SPE LLC*, No. IPR2018-01555 (P.T.A.B. Feb. 28, 2020);
- 16 • *Apple Inc. et al. v. INVT SPE LLC*, No. IPR2018-01581 (P.T.A.B. Feb. 28, 2020);
- 17 • *Intel Corporation v. VLSI Technology LLC*, No. IPR2018-01312 (P.T.A.B. Feb. 19,
 18 2020);
- 19 • *Intel Corporation v. VLSI Technology LLC*, No. IPR2018-01040 (P.T.A.B. Feb. 12,
 20 2020);
- 21 • *Intel Corporation v. VLSI Technology LLC*, No. IPR2018-01107 (P.T.A.B. Feb. 10,
 22 2020);
- 23 • *Intel Corporation v. VLSI Technology LLC*, No. IPR2019-01196 (P.T.A.B. Jan. 7, 2020);
- 24 • *Intel Corporation v. VLSI Technology LLC*, No. IPR2018-01296 (P.T.A.B. Apr. 11,
 25 2019);
- 26 • *Intel Corporation v. VLSI Technology LLC*, No. IPR2019-00034 (P.T.A.B. Apr. 11,
 27 2019);
- 28 • *Apple Inc. v. Uniloc 2017 LLC*, No. IPR2017-01993 (P.T.A.B. Mar. 6, 2019);
- *Apple Inc. and ZTE (USA) Inc. v. INVT SPE LLC*, No. IPR2018-01474 (P.T.A.B. Mar. 5,
 2019);
- *Apple Inc. and ZTE (USA) Inc. v. INVT SPE LLC*, No. IPR2018-01478 (P.T.A.B. Feb. 19,
 2019);

- *Intel Corporation v. VLSI Technology LLC*, No. IPR2018-01038 (P.T.A.B. Dec. 4, 2018);
- *Apple Inc. v. Uniloc Luxembourg S.A.*, No. IPR2017-02202 (P.T.A.B. May 1, 2018).

III. CONCLUSION

For the reasons stated above, the Court should grant Defendants' request for judicial notice.

Dated: September 15, 2020

Respectfully submitted,

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ECF ATTESTATION

3 I, Olivia Lauren Weber, am the ECF user whose ID and password are being used to file
4 DEFENDANTS' REQUEST FOR JUDICIAL NOTICE IN SUPPORT OF THEIR JOINT
5 MOTION TO DISMISS AND STRIKE PLAINTIFFS' AMENDED COMPLAINT. I hereby
6 attest that I received authorization to insert the signatures indicated by a conformed signature (/s/)
7 within this e-filed document.

By: /s/ Olivia Lauren Weber
Olivia Lauren Weber